

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California,
Department of Transportation, for an order
authorizing the Department to construct a grade
separation that will be known as the Mission
Avenue Overhead, PUC Bridge Number to be
assigned, over tracks owned by the Union Pacific
Railroad Company, in the County of Merced,
State of California.

Application 04-12-028
(Filed December 29, 2004;
First Amendment filed
January 11, 2005)

O P I N I O N**Summary**

This decision grants the request of the Department of Transportation, State of California (Caltrans) for authority to construct a grade-separated highway-rail crossing (crossing) over the single track and right-of-way of the Union Pacific Railroad Company (UPRR) in the County of Merced (County). The new crossing will be known as the Mission Avenue Overhead, will be constructed in connection with the Mission Avenue Interchange and Route 99 Freeway Conversion in Merced Project (Project), and will be identified as CPUC Crossing No. 001B -153.74-A. A map showing the general project vicinity is set forth in Appendix A.

The First Amendment to the Application was necessitated by the fact that the “Exhibits” appended to the original application, filed December 29, 2004, were the incorrect “Exhibits.”

Discussion

The proposed crossing, Mission Avenue Overhead, is part of the Project that involves the construction of a conversion (from four lanes to six) and realignment of State Route 99 between McHenry Road and Childs Avenue in Merced County. The purpose of the Project is to increase capacity and improve traffic flow in the area. The Mission Avenue Overhead will be a single span bridge that will have a length of 352 feet and a travel way width of 97 feet. There will be no railroad warning devices, special signs, or signals required at this crossing.

Caltrans is the lead agency for this new crossing project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code 21000 et seq. On November 3, 2000, the Division Administrator for the Federal Highway Administration (FHWA) signed the Initial Study/Environmental Assessment for the Project. On April 16, 2001, the Division Administrator for the FHWA signed a Finding of No Significant Impact (FONSI) certifying that all environmental requirements for the Project were met. Also on April 16, 2001, in compliance with CEQA, Caltrans issued a Mitigated Negative Declaration approving the Project. This Mitigated Negative Declaration states that an Initial Study was prepared by Caltrans, and based on that study, it was determined the Project in combination with proposed mitigation measures would not have a significant effect on the environment. As indicated above, the proposed crossing is a part of the Project.

The Commission is a responsible agency for this project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's

Environmental Impact Report or Negative Declaration prior to acting upon or approving the project (CEQA Guideline Section 15050(b)). The specific activities, which must be conducted by a responsible agency, are contained in CEQA Guideline Section 15096.

The Commission's Consumer Protection and Safety Division, Rail Crossings Engineering Section (RCES) has reviewed Caltrans' environmental documentation. The environmental documentation consists of a Mitigated Negative Declaration from Caltrans, a FONSI from the FHWA, and approval of the Initial Study and/Environmental Assessment for the Project by FHWA. Safety, traffic (transportation), and noise are within the scope of the Commission's permitting process. The environmental documentation does not identify any long-term significant impacts related to safety and traffic issues. Impacts from increased noise levels will be mitigated by construction of a sound wall. We find that Caltrans reasonably determined that the noise mitigation will be adequate to reduce potentially significant noise impacts to less-than-significant levels and we adopt that determination and mitigation for purposes of our approval.

RCES has inspected the site of the proposed crossing. After reviewing the need for and safety of the proposed crossing, RCES recommends that the requested authority sought by Caltrans be granted for a period of three years.

Application 04-12-028 meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which relates to the construction of a public highway across a railroad.

Categorization and Need for Hearings

In Resolution ALJ 176-3145 dated January 13, 2005, the Commission preliminarily categorized this application as ratesetting, and preliminarily

determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3145.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comments is being waived.

Assignment of Proceeding

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on December 30, 2004. A First Amendment to the Application was filed on January 11, 2005. No protests have been filed.
2. Caltrans requests authority, under Public Utilities Code Sections 1201-1205, to construct a new, grade-separated crossing over the track and right-of-way of UPRR in County. This crossing will be identified as CPUC Crossing No. 001B - 153.74-A, Mission Avenue Overhead.
3. Public convenience, safety and necessity require the construction of the proposed crossing.
4. Caltrans is the lead agency for this project under CEQA, as amended.
5. The Commission is a responsible agency for this project, and has reviewed and considered Caltrans' environmental documentation specified in this decision.

6. On November 3, 2000, the Division Administrator for the FHWA signed the Initial Study/Environmental Assessment for the Project. On April 16, 2001 the Division Administrator for the FHWA signed a FONSI certifying that all environmental requirements for the Project were met. Also on April 16, 2001, Caltrans issued a Mitigated Negative Declaration approving the Project, which the proposed crossing is a part. This Mitigated Negative Declaration finds that the Project in combination with proposed mitigation measures would not have a significant effect on the environment.

7. Safety, transportation, and noise are within the scope of the Commission's permitting process.

8. Caltrans' environmental documentation does not identify any significant environmental impacts from the construction or operation of the proposed crossing related to safety or transportation. Noise impacts will be mitigated by a sound wall in the affected areas.

Conclusions of Law

1. The application is uncontested and a public hearing is not necessary.
2. We find that Caltrans reasonably concluded that the adopted noise mitigation will reduce potential noise impacts to less-than-significant levels. We adopt that determination and mitigation for purposes of our approval.
3. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The Department of Transportation, State of California (Caltrans) is authorized to construct a grade-separated highway-rail crossing (crossing) over the track and right-of-way of the Union Pacific Railroad Company (UPRR) in

Merced County. The new crossing will be identified as CPUC Crossing No. 001B-153.74-A, Mission Avenue Overhead.

2. Caltrans shall comply with all applicable rules, including General Orders and Manual on Uniform Traffic Control Devices (MUTCD), as amended by the MUTCD California Supplement.

3. Construction and maintenance costs shall be borne in accordance with an agreement that has been entered into between Caltrans and UPRR (parties). Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

4. Within 30 days after completion of the work under this order, UPRR shall notify the Commission's Consumer Protection and Safety Division, Rail Crossings Engineering Section in writing, by submitting a completed Standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), that the authorized work was completed.

5. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

6. This application is granted as set forth above.

7. Application 04-12-028 is closed.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.

APPENDIX A

